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**MEMORANDUM**

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**TO:** MELISSA ESQUIVEL, INTERIM ADMINISTRATOR, LATINO AFFAIRS  
**FROM:** CHANTELE SMITH  
**SUBJECT:** PUBLICATION OF LATINO AFFAIRS' WEBSITE AND MATERIALS IN SPANISH  
**DATE:** 3/23/10

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**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED  
COMMUNICATION/ATTORNEY WORK PRODUCT**

You have asked for informal advice regarding the legality of publishing the Division of Latino Affairs' ("Division") website materials and other publications, specifically a monthly newsletter, in Spanish given the passage of Iowa Code section 1.18 (2009), the Iowa English Language Reaffirmation Act ("the Act"). This is an informal advice memorandum reflecting the result of my research and analysis and is not an opinion of the Attorney General's Office.

The Division's business is conducted by and through the Commission of Latino Affairs ("Commission"). Iowa Code chapter 216A (2009). The Commission's statutory duties are wide-ranging and include, among other things, coordinating, assisting, and cooperating with other state departments and agencies and directly providing services to and on behalf of Latino persons in this state. Iowa Code section 216A.15; Iowa Administrative Code ("IAC") 4.33-1.1. Understandably, the ability to effectively communicate with Latino persons is critical to the Commission as getting information to the population is the foundation of its work. The Commission principally effects widespread communication with its target population through the Division's website and monthly newsletter. Ideally, the Commission would be able to communicate completely and freely with the Latino population, regardless of the medium, in both English and Spanish. With the passage of the Act, the Commission is uncertain of its ability to do so.

Based on the language of the Act and the district court's decision in *King v. Mauro*, the only case thus far addressing the Act, I conclude that while the Act prohibits the posting of the Division's website in a language other than English, the law can be reasonably interpreted to allow a translation option—triggered by the user—to those accessing its website. Further, as to the monthly newsletter, which is printed in hard copy form in addition to being available via the website, I conclude that the Act can also be reasonably interpreted to allow the Commission to disseminate printed copies in a language other than English but only on a limited basis and only upon an individual's request. These conclusions do not impact the Division or Commission's ability to act or provide, in both English and any other languages, that information specifically exempted from the reach of the English-only law including, but not limited to, actions or documents protecting public health and safety and actions and documents regarding the compilation of any census of populations.

It is important to note that the conclusions reached in this memorandum are based solely upon what appears to be a *reasonable* interpretation of the law as there are no cases directly addressing the issues raised here. This memorandum should not be read as concluding that the Division or Commission will not face any legal challenges if the Commission ultimately decides to make its website or newsletter available to the public in a language other than English. Accordingly, in considering this matter, if it does, the Commission should be mindful of the potential for legal challenges to any action it takes in this regard.

#### A. Commission of Latino Affairs

The Commission of Latino Affairs (“Commission”) is charged by law with establishing policy and creating, assisting and supporting programs serving the Latino population in this state. As part of that duty, the Commission is required to work with other state departments and agencies to “serve the needs of Latino persons in the fields of education, employment, health, housing, welfare, and recreation.” Iowa Code section 216A.15(1). The Commission is also required to do things such as working with non-State public organizations which serve the Latino population, “stimulat[ing] public awareness” of problems faced by Latinos, and conducting training programs that enable Latino person to “assume leadership positions on the community level.” The Commission receives state and local funds but does not receive any federal funding.

#### B. Division/Commission Website and Newsletter

The Division’s website and monthly newsletters cover numerous topics including, but not limited to, information about make-up and operations of the Division and the Commission, legislative updates, schedules and agendas for Commission meetings, events and educational opportunities, job listings, the State’s official interpreter roster, public health updates and information, information about and links to social, medical and legal assistance, census information, tax-related information, and scholarship and grant opportunities. (An example of a monthly newsletter is attached for reference.) While both are available to the public in general, given the Division’s clear mission under Iowa law, the focus of the materials contained in each is on the needs of the Latino population.

#### C. The Act

Iowa Code section 1.18(2) provides:

In order to encourage every citizen of this state to become more proficient in the English language, thereby facilitating participation in the economic, political, and cultural activities of this state and of the United States the English language is hereby declared to be the official language of the state of Iowa.

In accordance with this declaration, the law requires, subject to certain exceptions, that all “official documents, regulations, order, transactions, proceedings, programs, meetings, publications, or actions take or issued” by the state be in the English language. Iowa Code § 1.18(3). Exceptions are allowed for action and communication

related to the teaching of languages; meeting requirements of the Individuals with Disabilities Education Act; trade, tourism, or commerce; public health and safety; compiling census information; protecting the rights of victims of crime or defendants; use of proper names or terms of art; rights guaranteed by the U.S. Constitution; and communications issued by a driver's license station. Iowa Code § 1.18(5).

#### D. Application of the Act

Understandably, the Commission has a great interest in communicating with and providing information to their target population in both English and Spanish. It would seem natural that a state agency charged with providing information to a Latino population would seek to use the most effective means of communication in order to better ensure that the information is reaching the intended recipients. In this case, making information available in Spanish will likely result in improved communications.

There has thus far been one challenge to a state agency's decision to publish information in a language other than English that has reached an Iowa court. In 2008, a group calling themselves U.S. English Only, Inc.—made up of a U.S. Congressman, four county auditors, three members of the Iowa Senate, a taxpayer and a citizen action group—claimed that then Secretary of State Mauro violated the Act by posting voter registration forms on its website in Spanish, Vietnamese, Laotian, and Bosnian. *King v. Mauro*, Ruling on Petition for Judicial Review, Iowa District Court for Polk County, No. CV6379 (March 31, 2008). The voter registration forms could be viewed, downloaded and printed by the user and then submitted as a completed voter registration form. Reaching the district court on judicial review, the court ruled that the use of the non-English forms violated the Act and enjoined their use. In large part, the district court's analysis was based on the nature of the voter registration form as an "official document" in and of itself. *Id.* at 19-20. However, in upholding the constitutionality of the Act, the district court specifically noted that "[a] ban on the use of non-English languages in official government documents would not prevent a state official from assisting a citizen to understand a voter registration form, or preclude the Secretary of State's Office from providing translation assistance online to prospective voters, thereby leaving alternative channels of communication open to citizens who require assistance in understanding official government documents." *Id.* at 29. The district court went on to provide that prohibiting state officials from providing such translation assistance to non-English speaking citizens "would almost certainly be deemed unconstitutional." *Id.* The case was not appealed so does not constitute binding law, but the district court's analysis provides at least one view of the breadth and limitations of the law.

Here, the question does not involve the publication of an official government document like the voter registration form in *King*. Rather, the question is whether the Commission may provide an option for its non-English speaking constituents to view Division website and newsletter information in a language other than English. Again, although there is no settled law on which the Commission can rely, a decision by the Commission to make translation of its website and newsletter available to the public would appear to be an acceptable "alternative channel of communication." *Id.* at 29. However, although the translation option appears to be a lawful one, distribution of the website and newsletter information in a non-English language should be as limited as possible so as to avoid offending the Act.

As to the website, the website materials should be displayed in English (upon opening the site) with any translation option triggered only by the user and only for the use of the triggering user. Only those items that meet the exceptions provided by the Act should be displayed on the website—without triggering the translation option—in a language other than English. As to paper copies of the newsletter, any copies of the newsletter printed in a non-English language should be provided only upon the request of an individual and should not be distributed to groups. The English versions of the website and newsletter can indicate in a smaller print—or in some relatively inconspicuous manner—that the materials are available in a non-English language(s) either via an electronic translation option or upon request.

I appreciate your time, and I look forward to discussing this with you.